

**REMARKS****Status of Application**

Claims 1-17 are pending in the application. Claims 1-17 are finally rejected under 35 U.S.C. § 102(b) as being anticipated by Barrett et al. (U.S. Patent 5,336,261). Applicant traverses the rejection and respectfully requests reconsideration.

Claim 11 has been amended to correct a typographically error changing the word “hyoperia” to “hyperopia”. Claims 1 and 11 have been further amended as discussed below. Claims 4 and 12 have been canceled.

**Anticipation under 35 U.S.C. 102(b) as being unpatentable over Barrett et al. (U.S. Patent 5,336,261).**

To further illustrate aspects of the invention and to place claims in better condition for allowance after a final rejection, Claims 1 and 11 have been amended to add the following limitations “the index of refraction in the range of 1.36 to 1.39” and “the anterior and posterior surfaces having different radii of curvature”.

In the case of hyperopia, the corneal curvature must be steepened. The corneal implant of Applicant’s claim 1 and 11, when placed under a lamellar dissection made in the cornea (such as a corneal flap), to relieve tension of Bowman’s membrane, alters the outer surface of the cornea to correct the refractive error of the eye. (See Applicant’s specification paragraph 10). That is why Applicant’s implant of claims 1-17, as currently amended, has an index of refraction in the range of 1.36 to 1.39. In other words, Applicant’s implant of claim 1 and 11 ***distorts the cornea in order to obtain the desired optical power.***

Barrett clearly teaches away from Applicant’s claimed invention. Beginning in column 3, line 66, of the Barrett et al. reference when discussing the problem solved with the Barrett lens, the specification states “[t]here remains, therefore, an important need for intracorneal lenses of a refractive index sufficiently high so ***as to avoid the need to distort the cornea*** in order to obtain the desired optical power...” (emphasis added).

Simply put, the Barrett et al. reference teaches using an index of refraction that is outside the range of the index of refraction of the corneal tissue for correction of refractive errors of the eye.

“The lens is of a composition relative to that of the surrounding tissues such that multiple refractive indices may be created and multiple focal corrections are possible.” (See Barrett et al., column 4, lns. 29-31) “The lenses of the invention provide multiple refractive indices and multiple focalities.” (See Barrett et al., column 4, lns. 59-61). In teaching the useful multifocality capability, the Barrett reference sets forth various materials for the corneal inlays, each of which have a refractive index greater or equal to 1.42.

See column 6, lines 59-60 – a R.I. of 1.42 to 1.43

See column 6, lines 66-67 – a R.I. of 1.633

See column 7, line 5 – a R.I. of 1.49

See column 7, Example 1 – PMMA (which has an index of refraction 1.49 or higher)

See column 7, Example 2 – R.I. of 1.425

See column 8, Example 3 – R.I. of 1.425

Incidentally, the index of refraction of the corneal tissue is in the range of 1.36 to 1.39. Applicant’s claimed lens utilizes a material with a refractive index substantially the same as that of the neighboring stroma tissue. By utilizing a material for a lens with an index of refraction substantially the same as that of corneal tissue, then Barrett’s useful multifocal capability is not obtained.

See claim 1, “when implanted in the eye multiple focalities are created only by the presence or absence of said lens.”

See claim 2, “wherein said refractive index of said lens is less or greater than that of the adjacent corneal tissue.”

Applicant respectfully requests withdrawal of the rejection of claims 1-17 under 35 U.S.C. § 102(b) as being unpatentable over Barrett et al. (U.S. Patent 5,336,261).

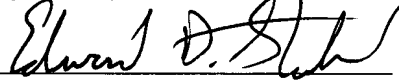
**Conclusion**

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2375, under Order No. HO-P01709US6 from which the undersigned is authorized to draw.

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Respectfully submitted,

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